Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-38

FEDERAL POWER COMMISSION,
Petitioner,

v.

FLORIDA POWER & LIGHT COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING FOR THE RESPONDENT FLORIDA POWER & LIGHT COMPANY

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February, 1972

FIDELITY PRINTING COMPANY, INC., HOUSTON

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Pursuant to Supreme Court Rule 58, Florida Power & Light Company ("FPL"), Respondent herein, respectfully petitions this Court for rehearing of its decision of January 12, 1972 in this cause.

This Court's Opinion determined there is jurisdiction by the Federal Power Commission (the "Commission") over FPL because it found there was substantial evidence to support the Commission's method of tracing. FPL requests

a rehearing on the grounds that this Court overlooked the Commission's use of an *erroneous legal standard* in its tracing technique upon which jurisdiction was based.

The legal standard under the Federal Power Act for determining jurisdiction is interstate transmission of "electric energy".[1] The Commission's jurisdiction under its tracing method was not determined here by the flow of electric energy, but instead the Commission made its determination based upon the flow of "reactive power". Reactive power is not electric energy, and therefore the Commission used the wrong legal standard.

The critical issue with respect to the Commission's tracing technique is whether the Commission could properly ignore the realities of a 225-foot bus and treat it as a point or a reservoir or a tank in which electric energy is commingled, like molecules of water from different sources, rather than treat it like the short piece of transmission line that it is (Slip Opinion pp. 8-10).[2]

The Commission's *sole* excuse for treating a 225-foot bus as a point or reservoir is because in an alternating current flow (whether it be three phase or not) there is a small amount of each fraction of a second during which "power" in each phase flows back from the load to the generator. Rather than having to trace or show these counterflows of "power", the Commission finds it simpler to speak of the bus as a reservoir in which commingling of "power" takes place (App. 146, 147, 150, 151, 154, 155).

The proposition that each cycle of "power" includes a small portion of a negative or reverse "power" (that is,

[1] 16 U.S.C. § 824.

[2] The importance of this commingling is emphasized by this Court in the following words: "If the Commission's conclusion of commingling is not overturned, then the legal consequences are clear". Slip Opinion p. 10.

reactive power is misleading. *The reactive power that is reversing is not electric energy.* The statutory standard is interstate transmission of "electric energy" — not "reactive power". *Electric energy never has a reverse pulse.* It is furnished by the generator to the load. The load does not furnish electric energy to the generator.

Since the controlling issue in the case is whether "electric energy" is transmitted in interstate commerce, its definition is important. It is defined by the Commission as follows:

> "ENERGY — *that which does or is capable of doing work.* It is measured in terms of the work it is capable of doing; electric energy is usually measured in kilowatt-hours."[3]

The "power" diagrams used by the Commission's expert in an attempt to establish a small reverse flow of "power" are diagrams of *apparent* power.[4] Apparent power is composed of both *real* power and *reactive* power. Reactive power is that portion of apparent power that *does not work*, and is therefore no part of electric energy. However *real* power is that part of apparent power which is work producing, and which is electric energy at any one instant.[5]

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[3] *Glossary of Important Power and Rate Terms, Abbreviations, and Units of Measurements* promulgated by the FPC in 1965, p. 6.

[4] Ex. 58, App. 240; Ex. 59, R. 1252; Ex. 60, R. 1253

[5] The terms "apparent power", "reactive power" and "real power", are defined as follows:
"APPARENT — Apparent power is proportional to the mathematical product of the volts and amperes of a circuit. This product generally is divided by 1,000 and designated in kilovoltamperes (kVA). It is comprised of both real and reactive power."
"REACTIVE — *The portion of 'Apparent Power' that does no work.* It is commercially measured is kilovars. Reactive power must be supplied to most types of magnetic equipment, such as motors. It is supplied by generators or by electrostatic equipment, such as capacitors."

Real power, that is, instantaneous electric energy, never has a reverse pulse, and this is admitted by the Commission's expert (App. 174).

Because the Commission based its jurisdiction upon the flow of *reactive power* rather than upon the statutory standard of *electric energy*, the decision of the Court of Appeals should have been upheld. This Court's deference to the expertise of the Commission does not include deference to its choice of a legal standard other than the statutory one. *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

This is not a case where it can be inferred that given enough time and enough data the Commission could establish an interstate flow of electric energy. The Examiner, whose findings were approved by the Commission, found:

> "On the basis of the commingled method, it can be proved that electric energy is transmitted between Florida (FPL) and Georgia (Georgia Power); on the basis of the systems study method the contrary follows." (App. 272)

The Commission's problem is the absence of interstate transmission of electric energy. It should not be allowed to extend its jurisdiction beyond the statutory standard of electric energy.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Respondent prays that this petition for rehearing be granted, that the former

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"REAL — *This is the energy or work-producing part of 'Apparent Power.'* It is the rate of supply of energy, measured commercially in kilowatts. *The product of real power and length of time is energy*, measured by watthour meters and expressed in kilowatthours."

Glossary of Electric Utility Terms prepared by the Statistical Committee of the Edison Electric Institute, pp. 62, 63.

opinion be withdrawn, and that the judgment of the Court of Appeals be affirmed.

Respectfully submitted,

Original Signed By
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CERTIFICATE UNDER RULE 58

I certify that this Petition for Rehearing is presented in good faith and not for delay.

Original Signed By
Leon Jaworski

Leon Jaworski

PROOF OF SERVICE

Service of this Petition for Rehearing for the Respondent Florida Power & Light Company has been made upon the Federal Power Commission by mailing copies thereof air-mail, postage prepaid to Mr. Erwin N. Griswold, Solicitor General, Department of Justice, Washington, D. C. 20530 this 31 day of January, 1972.

Original Signed By
JEFFERSON D. GILLER

Attorney for Respondent